

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STEPHANIE ZOBAY, et al.,

Plaintiffs,

vs.

MTN GROUP LIMITED, MTN IRANCELL,  
MTN DUBAI LIMITED, ZTE  
CORPORATION, ZTE (USA) INC., ZTE  
(TX) INC., HUAWEI TECHNOLOGIES  
CO., LTD., HUAWEI TECHNOLOGIES  
USA INC., HUAWEI DEVICE USA INC.,  
FUTUREWEI TECHNOLOGIES, INC., and  
SKYCOM TECH CO., LTD.,

Defendants.

CASE NO. 21-CV-3503

~~PROPOSED~~ STIPULATED ORDER

Subject to the approval of the Court, Plaintiffs in the above-captioned action ("Plaintiffs"), Defendants ZTE (USA) Inc., ZTE (TX) Inc. ("ZTE US Defendants"), and Huawei Technologies USA Inc., Huawei Device USA Inc., and Futurewei Technologies Inc. ("Huawei US Defendants"), through their undersigned counsel, stipulate and agree as follows:

WHEREAS, Plaintiffs commenced the above-captioned action ("*Zobay*") against the ZTE US Defendants through the filing of a complaint (the "Complaint") on June 22, 2021 (ECF No. 1) and against the Huawei US Defendants on April 3, 2022, through the filing of an Amended Complaint (the "First Amended Complaint") on February 9, 2022 (ECF No. 52).

WHEREAS, on September 28, 2023, the Court issued an Opinion and Order in *Zobay* following motion to dismiss briefing and oral argument on November 7, 2022, which dismissed

the First Amended Complaint against the ZTE US Defendants and the Huawei US Defendants. *See* ECF 129 (“*Zobay* MTD Opinion”).

WHEREAS, the Court dismissed the ATA claims in *Zobay*: (i) against the ZTE US Defendants for lack of personal jurisdiction, and (ii) against the Huawei US Defendants for failure to state a claim.

WHEREAS, with leave of this Court, Plaintiffs filed a second amended complaint (“Second Amended Complaint”) on November 13, 2023 (ECF No. 142) whose primary purpose was to add a new Count Four asserting attack-predicate ATA liability for injuries to Plaintiffs in Afghanistan against all Defendants.

WHEREAS, at a pre-motion conference on October 31, 2023, Plaintiffs’ counsel represented to the Court that the addition of Count Four in their Second Amended Complaint would not require the Court to revisit its earlier determinations regarding the ZTE US Defendants and Huawei US Defendants as set forth in its *Zobay* MTD Opinion. Plaintiffs’ counsel also acknowledged that they asserted the same theory of liability alleged in Count Four in Count One of a related case before this Court, *David Lau, et al. v. ZTE Corp., et al.*, Case No. 22-cv-1855 (E.D.N.Y.) (“*Lau* Action”). On September 28, 2023, the Court issued an Opinion and Order in *Lau* following motion to dismiss briefing and oral argument on January 11, 2023, which dismissed the *Lau* First Amended Complaint against the ZTE US Defendants and the Huawei US Defendants. *See Lau* Action, ECF 73 (together, with *Zobay* MTD Opinion, “MTD Opinions”).

WHEREAS, an answer to the Second Amended Complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure is due in *Zobay* within fourteen (14) days of service of the amended pleading, *see* Fed. R. Civ. P. 15(a);

WHEREAS, the parties wish to provide a streamlined procedure to promote the efficient resolution of the Second Amended Complaint with respect to the previously dismissed ZTE US Defendants and the Huawei US Defendants;

IT IS HEREBY STIPULATED AND AGREED, subject to approval of the Court, by and between the undersigned counsel for Plaintiffs, ZTE US Defendants, and Huawei US Defendants, that:

1. The parties' respective arguments with respect to the ZTE US Defendants' and Huawei US Defendants' motions to dismiss in *Zobay* and the relevant arguments in the *Lau* Action regarding Count One of the *Lau* Complaint are adopted and incorporated fully in response to the Second Amended Complaint, and shall be treated as having been made as to the Second Amended Complaint. *Zobay* Action, ECF 48, 81, 83-85, 87, 93, 95, 99, 101-105, 110, 112, 116, 120-123; *Lau* Action, ECF 54-61, 64-67, 71. The parties' arguments shall therefore collectively be treated as a motion to dismiss under Fed. R. Civ. P. 12(b) having been made with respect to the Second Amended Complaint, and those arguments are preserved with respect to any appeal in this action.

2. The Court's MTD Opinion dismissing the *Zobay* Action and the relevant portions of the Court's MTD Opinion in the *Lau* Action addressing Count One of the *Lau* Complaint shall be treated as if rendered with respect to the Second Amended Complaint for all purposes. As a result, and for all of the reasons set forth in the MTD Opinions, Plaintiffs' claims in the Second Amended Complaint against the ZTE US Defendants and the Huawei US Defendants are dismissed. This dismissal shall be effective as of the date that the Court enters this order.

3. Notwithstanding anything to the contrary in this ~~Proposed~~ Stipulated Order, nothing herein or concerning the parties' application of the Court's reasoning in the MTD

Opinions to dismiss Plaintiffs' claims against the ZTE US Defendants or Huawei US Defendants is, or should be construed as, any party agreeing either implicitly or expressly with any of the Court's findings of fact, conclusions of law, or reasoning set forth in the MTD Opinions.

4. Nothing in this ~~Proposed~~ Stipulated Order shall have any bearing on Plaintiffs' claims against any defendant named in *Zobay* other than the ZTE US Defendants and Huawei US Defendants.

**AGREED:**

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*So Ordered*  
11/28/23 s/Carol Bagley Amon